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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

DAVID FROST

Plaintiff,

v.

ASSOCIATED CREDIT SERVICE,
INC., a Washington Corporation; and
DOE 1 and the spouse and marital
community

Defendants.

Case No.: CV-12-616-TOR

COMPLAINT

(JURY DEMANDED)

Plaintiff David Frost, through his attorneys, Kirk D. Miller of *Kirk D. Miller, P.S.* and Michael D. Kinkley of *Michael D. Kinkley, P.S.*, allege the following:

COMPLAINT -1

KIRK D. MILLER P.S.
211 E. Sprague Ave.
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I. COMPLAINT

1.1. This is an action for damages and remedies against Associated Credit Services, Inc. (hereinafter “Associated”) pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692, et seq.

II. JURISDICTION & VENUE

2.1. Jurisdiction of this Court arises under 15 U.S.C. §1692k (d), 28 U.S.C. §1337, and 28 U.S.C. §1331. Supplemental jurisdiction exists for state law claims pursuant to 28 U.S.C. §1367. Declaratory relief is available pursuant to 28 U.S.C. §2201 and §2202.

2.2. Venue is proper in this District under 28 U.S.C. §1391(b) because the Defendants conduct affairs and transact business in this District, the unlawful acts giving rise to this Complaint occurred in this District, and the Plaintiff resides within the territorial jurisdiction of the court.

III. PARTIES

3.1. Plaintiff David Frost is a resident of the state of Washington, residing within the territorial jurisdiction area of the United States District Court for the Eastern District of Washington.

3.2. Plaintiff David Frost is a natural person.

3.3. The Defendants alleged that David Frost was obligated to pay a debt.

1 3.4. Plaintiff David Frost is a “consumer” as defined by the FDCPA 15
2 U.S.C. § 1692a(3).

3
4 3.5. The alleged debt was an obligation of Plaintiff to pay money arising
5 out of a transaction primarily for personal, family, or household
6 purposes. Defendant Associated is a collection agency licensed by the
7 state of Washington.

8
9 3.6. Defendant Associated attempted to collect a “debt” as defined by
10 FDCPA 15 U.S.C. §1692a(5).

11 3.7. Defendant Associated regularly uses the telephone in its attempts to
12 collect debts.

13
14 3.8. Defendant Associated uses instrumentalities of interstate commerce or
15 the mails in its business.

16
17 3.9. Defendant Associated uses the mail in its attempts to collect debts.

18 3.10. Defendant Associated is a Washington corporation engaged in the
19 business of collecting debts that are originally owed to another.

20 3.11. Defendant Associated regularly collects or attempts to collect, directly
21 or indirectly, debts owed or due or asserted to be owed or due another.

22
23 3.12. Defendant Associated is a “debt collector” as defined by the FDCPA
24 15 U.S.C. §1692a(6).

25 3.13. Defendant Doe 1 will be identified by name through discovery.

1 3.14. Defendant Doe 1 is the employee of Defendant Associated that called
2 Plaintiff Frost in May 2012.

3
4 3.15. Defendant Doe 1 uses instrumentality of interstate commerce,
5 including the telephone or the mails, in the course and scope of his
6 employment at Defendant Associated, in his attempts to collect debts.

7
8 3.16. Defendant Doe 1 is a “debt collector” as defined by the FDCPA 15
9 U.S.C. § 1692a(6).

10 3.17. All acts and omissions by Doe 1 were performed on behalf of his
11 employer, Associated.

12
13 3.18. All acts alleged of Doe 1 were done on his own behalf, on behalf of
14 Defendant Associated, and on behalf of the Doe 1 and the marital
15 community.

16
17 3.19. Defendant Associated is jointly and severably liable for the acts and
18 omissions of its agents, Defendants Doe 1, through the doctrine of
19 respondent superior.

20
21 IV. FACTS

22 4.1. In May, 2009, the burners on Plaintiff Frost’s gas range were not
23 working properly.
24
25

1 4.2. In May, 2009, Plaintiff Frost contacted Fred's Appliance (located in
2 Spokane, Washington)(hereafter "Fred's") to repair the gas range
3 burners.
4

5 4.3. On or about May 26, 2009, an alleged appliance repairman from
6 Fred's arrived at Plaintiff Frost's home.
7

8 4.4. The Fred's repair worker failed to repair Plaintiff Frost's gas range
9 burners.
10

11 4.5. Plaintiff Frost never agreed to pay Fred's Appliance since the burners
12 were not repaired.
13

14 4.6. On December 3, 2012, Plaintiff Frost had a different repairman fix the
15 burners at a cost of Eighty One Dollars and Fifty Three Cents
16 (\$81.53).
17

18 4.7. The Fred's repairman left Plaintiff Frost's home without requesting
19 any payment and without leaving any bill or invoice since the Fred's
20 alleged repairman did not fix the burners.
21

22 4.8. Plaintiff Frost does not owe Fred's anything.
23

24 4.9. Fred's wholly failed to repair Plaintiff Frost's gas range.
25

4.10. Associated claims that sometime after May 2009, Fred's Appliance
assigned Plaintiff Frost's account to Associated Credit for collection.

1 4.11. In the spring of 2012, Defendant Doe 1, an agent or employee of
2 Defendant Associated, called Plaintiff Frost demanding payment of
3 the Fred's Appliance repair bill.
4

5 4.12. In May 2012, Defendant Doe 1 called Plaintiff Frost, in an attempt to
6 collect the alleged Fred's Appliance debt.
7

8 4.13. During the May 2012 telephone communication between Defendant
9 Doe 1 and Plaintiff Frost, Defendant Doe 1 indicated that a lawsuit
10 had been started by Defendant Associated against Plaintiff Frost to
11 collect the alleged Fred's Appliance debt from Plaintiff Frost.
12

13 4.14. No lawsuit has been commenced against Plaintiff Frost to collect the
14 alleged Fred's Appliance debt.
15

16 4.15. Doe 1 misrepresented that legal action was being taken against
17 Plaintiff Frost in order to coerce Plaintiff Frost into paying a bill he
18 did not owe to Fred's.
19

20 4.16. On May 7, 2012, Defendant Associated mailed an alleged Spokane
21 County (Washington) Superior Court Summons and Complaint to
22 Plaintiff Frost.
23

24 4.17. A true and correct copy of the Summons and Complaint, (mailed on
25 May 7, 2012, from Defendant Associated to Plaintiff Frost) is attached

1 hereto as “Exhibit 1”and hereby incorporated by reference as though
2 fully set forth herein.

3
4 4.18. The Summons was dated “February 9, 2012”.

5 4.19. The Summons stated “/s/ Paul J. Wasson” but was not signed.

6 4.20. Paul Wasson is an attorney.

7
8 4.21. Paul Wasson did not sign the Summons on or before February 9,
9 2012.

10 4.22. Paul Wasson did not approve the Summons on or before February 9,
11 2012.

12
13 4.23. The Summons states in relevant part that “A lawsuit has been started
14 against you in the above-entitled court by Associated Credit Services,
15 Inc., Plaintiff.” This statement was not true.

16
17 4.24. No lawsuit had been commenced against Plaintiff Frost by Defendant
18 Associated before May 7, 2012 (the date of receipt of the Summons
19 and Complaint by Plaintiff Frost in the mail).

20 4.25. No lawsuit by Associated has ever been commenced against Plaintiff
21 Frost by Associated.

22
23 4.26. The Summons and Complaint mailed to Plaintiff Frost are
24 “communication[s]” in an attempt to collect a debt as defined by 15
25 U.S.C. § 1692a(2).

1 4.27. The Summons and Complaint were made to appear to have been
2 signed by attorney Paul Wasson.

3
4 4.28. Attorney Wasson has never signed any Summons or Complaint for a
5 lawsuit against Plaintiff Frost.

6 4.29. Attorney Wasson did not sign the original Summons or Complaint for
7 a lawsuit against Plaintiff Frost.

8
9 4.30. Attorney Wasson had not reviewed the Summons and Complaint that
10 was sent to Plaintiff Frost on or before May 7, 2012.

11 4.31. Defendant Associated has never commenced a lawsuit against
12 Plaintiff Frost.

13
14 4.32. In the last ten (10) years, Defendant Associated has never commenced
15 a lawsuit against any defendant by filing a Summons and Complaint
16 in the Spokane County (Washington) Superior Court.

17
18 4.33. In Spokane County, Defendant Associated exclusively files Summons
19 and Complaints for debt collection s in the Spokane County District
20 Court.

21
22 4.34. Defendant Associated never intended to start a lawsuit against
23 Plaintiff Frost in the Spokane County Superior Court, but sent the
24 Summons and Complaint to coerce payment from Plaintiff Frost.
25

1 4.35. In Washington State, a lawsuit is started in the Superior Court by
2 either service or filing of a Summons and Complaint.

3
4 4.36. The mailing of the Summons and Complaint is not proper service and
5 did not commence a lawsuit in Spokane Superior Court.

6 4.37. Falsely alleging that a lawsuit has been started in the Spokane County
7 Superior Court may deceive the least sophisticated consumer because,
8 upon inquiry by the consumer, the Superior Court cannot confirm
9 whether or not an unfiled lawsuit has been started.
10

11 4.38. The principle amount of the alleged debt that the “Complaint” claimed
12 was due and owing from Plaintiff Frost is approximately one hundred
13 sixty dollars (\$160.00).
14

15 4.39. Plaintiff Frost does not owe any debt to Fred’s Appliance or its
16 assignee, Defendant Associated.
17

18 4.40. The approximate one hundred sixty dollar (\$160.00) amount claimed
19 due by Fred’s Appliance is not a liquidated sum because it was not
20 agreed and is subject to a reasonableness determination.
21

22 4.41. The approximate one hundred sixty dollar (\$160.00) amount claimed
23 due by Fred’s Appliance cannot be determined by reference to any
24 contract between Fred’s Appliance and Plaintiff Frost.
25

4.42. Defendant Associated is not entitled to any pre-judgment interest.

1 4.43. Attempting to collect pre-judgment interest from Plaintiff Frost was
2 an attempt by Associated to collect an amount not permitted by law or
3 contract.
4

5 4.44. In the alleged “Complaint,” Defendant Associated claimed that
6 Defendant Frost owes seventy eight dollars and three cents (\$78.03) in
7 pre-judgment interest.
8

9 4.45. The total amount prayed for in Defendant Associated’s “Complaint”
10 is eight hundred thirty six dollars (\$836.00).
11

12 4.46. Eight hundred thirty six dollars (\$836.00) is within the Spokane
13 County District Court’s subject matter jurisdictional limit. See *RCW*
14 *3.66.020*.
15

16 4.47. Defendant Associated attempted to collect two hundred dollars in
17 statutory attorney’s fees from Plaintiff Frost pursuant to *RCW*
18 *4.84.080*.
19

20 4.48. Defendant Associated is not entitled to statutory attorney’s fees for
21 any lawsuit started in Superior Court that are within the jurisdiction of
22 the county district court. See *RCW 4.84.030*.
23

24 4.49. Attempting to collect statutory attorney’s fees from Plaintiff Frost was
25 an attempt by Associated to collect an amount not permitted by law.

V. VIOLATION OF THE FAIR DEBT
COLLECTION PRACTICES ACT

- 5.1. The debt collector, Defendant Associated, through its own acts, by and through their agents and employees, and through its policies and procedures, has violated the FDCPA which has caused damage to Plaintiff.
- 5.2. Associated falsely represented the character, amount, and/or legal status of the alleged debt, violating 15 USC § 1692e(2), 15 USC § 1692e(9), 15 USC § 1692e(13) and other provisions of the FDCPA.
- 5.3. Associated misrepresented the amount due and that any amount was due for attorney's fees.
- 5.4. Associated misrepresented the amount due and that any amount was due for pre-judgment interest.
- 5.5. Associated misrepresented to Plaintiff Frost that a lawsuit had been started.
- 5.6. Associated misrepresented that the "Summons" and "Complaint" were legal process.
- 5.7. Associated used unfair or unconscionable means to collect or attempt to collect a debt in violation of 15 USC § 1692f including but not limited to 15 USC § 1692f(1).

1 6.3. Statutory damages pursuant to the FDCPA 15 U.S.C. §
2 1692k(a)(2)(A).

3
4 6.4. Costs and reasonable attorney's fees pursuant to the FDCPA, 15
5 U.S.C. §1692k(a)(3);

6 6.5. Injunction preventing the Defendants from wrongfully billing and
7 collecting or attempting to collect debts by falsely representing to
8 consumers:
9

10 6.5.1. That a lawsuit has been started against a consumer when it has
11 not;

12
13 6.5.2. That documents mailed to a consumer are legal process when
14 they are not.

15 6.5.3. The Court where the lawsuit, if any, is to be commenced;

16
17 6.5.4. That pre-judgment interest is owed for claims that are
18 unliquidated and cannot be determined by reference to a fixed
19 standard in a contract;

20 6.5.5. That statutory attorney's fees are owed for any lawsuit
21 commenced in Superior Court, which is within the subject
22 matter jurisdiction of the County District Court.
23

24 6.6. For such other and further relief as may be just and proper.
25

1 DATED this 7th day of December, 2012.

2
3
4
5
6 *Michael D. Kinkley, P.S.*

Kirk D. Miller, P.S.

7
8 /s Michael D. Kinkley

/s Kirk D. Miller

9 Michael D. Kinkley

Kirk D. Miller

10 WSBA #11624

WSBA #40025

11 Attorney for Plaintiff

Attorney for Plaintiff